



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

February 21, 2003

Mr. Lawrence G. Provins  
Assistant city Attorney  
City of Pearland  
3519 Liberty Drive  
Pearland, Texas 77581

OR2003-1151

Dear Mr. Provins:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 176841.

The Pearland Police Department (the "department") received a written request for, among other things, certain records contained in a named police officer's personnel file.<sup>1</sup> You contend that the records that you submitted to this office are excepted from required disclosure pursuant to sections 552.101, 552.102, and 552.103 of the Government Code.<sup>2</sup>

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." We note at the outset that among the documents you submitted to this office are the police officer's mental health and medical records. The release of the psychological records is governed by chapter 611 of the Health and Safety Code. Section 611.002 of the Health and Safety Code makes confidential "[c]ommunications between a patient and a professional, [and] records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional." *See also* Health & Safety Code § 611.001 (defining "patient" and "professional"). Sections 611.004 and 611.0045 provide for access to mental health records

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<sup>1</sup>We assume the department has released the other requested information. If it has not, it must do so at this time. *See* Gov't Code §§ 552.301, .302.

<sup>2</sup>Because we resolve your request under section 552.101 of the Government Code, we need not address the applicability of the other exceptions you raised.

only by certain individuals, including “a person who has the written consent of the patient.” Health & Safety Code § 611.004(a)(4). Assuming the mental health information you submitted to this office in fact either was created or is maintained by a “professional,” we conclude that the department may release the mental health information that we have marked only in accordance with the access provisions of chapter 611. Health & Safety Code § 611.002(b); *see id.* §§ 611.004, 611.0045.

The release of the submitted medical records is governed by the Medical Practice Act (the “MPA”), Occ. Code § 151.001 *et. seq.* Section 159.002 of the Occupations Code provides in pertinent part:

- (a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.
- (b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.
- (c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient’s behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(a)-(c). Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See* Occ. Code §§ 159.002, .004; Open Records Decision No. 598 (1991). The MPA also includes provisions that govern the disclosure of information that it encompasses. *See id.* §§ 159.003, .004, .005, .006. This office has determined that in governing access to a specific subset of information, the MPA prevails over the more general provisions of chapter 552 of the Government Code. *See* Open Records Decision Nos. 598 (1991), 565 (1990). Consequently, the medical records you submitted to this office are made confidential under section 159.002 of the Occupations Code. The department therefore must not release these medical records, which we have marked, except in accordance with the MPA.

We now address the remaining documents at issue. Section 143.089(g) of the Local Government Code provides:

A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department’s use, *but the department may not release any information contained in the department file*

*to any agency or person requesting information relating to a fire fighter or police officer.* The department shall refer to the director [of civil service] or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

Local Gov't Code § 143.089(g) (emphasis added). Information that reasonably relates to a police officer's employment relationship with the department and that is maintained in the department's internal file pursuant to section 143.089(g) is confidential and must not be released. *City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.--San Antonio 2000, pet. denied); *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946, 949 (Tex. App.--Austin 1993, writ denied). Because you state that the remaining submitted records are maintained in the department's internal files, we conclude that the department must withhold these records in their entirety pursuant to section 143.089(g) in conjunction with section 552.101 of the Government Code.<sup>3</sup>

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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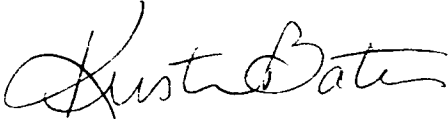
<sup>3</sup>We assume the department has complied with the requirement in subsection (g) to refer the requestor to the City of Pearland's Civil Service Commission for the records contained in the officer's civil service file.

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Kristen Bates", written in a cursive style.

Kristen A. Bates  
Assistant Attorney General  
Open Records Division

KAB/RWP/lmt

Ref: ID# 176841

Enc: Submitted documents

c: Mr. John W. Armstrong III  
Law Offices of Charles G. Kingsbury  
16826 Titan Drive  
Houston, Texas 77058  
(w/o enclosures)